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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTO VERDUSCO,

Defendant and Appellant.

B206126

(Los Angeles County
Super. Ct. No. VA097810)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Higa, Judge. Affirmed.

Joanie P. Chen, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lawrence M. Daniels and Lauren E. Dana, Deputy Attorneys General, for Plaintiff and Respondent.

Roberto Verduco was convicted by a jury of assault with a deadly weapon, assault by means likely to produce great bodily injury, making a criminal threat and evading a police officer. On appeal Verduco contends the court improperly admitted one portion of his statement to the victim over his Evidence Code section 352 objection. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Information

Verduco was charged in an information with attempted murder (Pen. Code, §§ 664, 187, subd. (a))¹ (count 1), assault with a deadly weapon (§ 245, subd. (a)(1)) (count 2), assault by means likely to produce great bodily injury (§ 245, subd. (a)) (count 3), making a criminal threat (§ 422) (count 4) and evading a police officer (Veh. Code, § 2800.1, subd. (a)) (count 5, a misdemeanor). The information specially alleged as to counts 1 through 3 that Verduco had personally inflicted great bodily injury (§ 12022.7, subd. (a)) and had suffered one prior serious or violent felony conviction within the meaning of the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). As to counts 1 through 4, it also specially alleged Verduco had served four prior separate prison terms for felonies within the meaning of section 667.5, subdivision (b).

2. The Trial

Verduco pleaded not guilty and denied the special allegations. According to the evidence presented at trial, Verduco had been in a romantic relationship with Deida Rodriguez for 12 years and was the father of two of her three children. Rodriguez ended the relationship in July 2006 when Verduco hit her in the face and body following an argument. Rodriguez reported the beating to the police.

On October 8, 2006, after leaving several telephone messages for Rodriguez, Verduco telephoned Rodriguez and told her she was “going to pay for it” and “he was

¹ Statutory references are to the Penal Code unless otherwise indicated.

going to do to [her] what the Mongols do,” explaining he would kill her and put her in the trunk of a car. Rodriguez became very frightened and told Verdusco to stop calling her.

On October 10, 2006 Verdusco went to Rodriguez’s apartment where Rodriguez lived with her three children and entered the open door. Refusing Rodriguez’s pleas to leave, Verdusco stabbed Rodriguez with a pair of scissors multiple times in her lower back and chest while Rodriguez and her daughter screamed at him to stop.²

On October 13, 2006, Los Angeles police officers on patrol spotted Verdusco driving his car. The police activated the patrol car’s sirens to signal to Verdusco to stop. Instead, Verdusco ran a red light and led police on a low-speed pursuit that was more than one mile long and lasted two and one-half minutes.

3. The Verdict and Sentence

The jury acquitted Verdusco of attempted murder but found him guilty on each of the remaining charges. The jury also found true the great bodily injury allegations. After Verdusco waived his right to a jury trial on the prior conviction and prior prison term allegations, the trial court found the allegations true. Verdusco was sentenced to an aggregate state prison term of 14 years, four months.

DISCUSSION

1. Standard of Review

“We review for abuse of discretion a trial court’s ruling on relevance and the exclusion of evidence under Evidence Code section 352.” (*People v. Avila* (2006) 38 Cal.4th 491, 578.) Under the abuse of discretion standard, “a trial court’s ruling will not be disturbed, and reversal of the judgment is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” (*People v. Hovarter* (2008) 44 Cal.4th 983, 1004.)

² The information relates only to the October 10, 2006 attack and does not charge Verdusco with any offenses in relation to the July 2006 incident.

2. *The Trial Court Did Not Abuse Its Discretion in Admitting Evidence of Verduco's Threat to Rodriguez over His Evidence Code Section 352 Objection*

At the beginning of trial defense counsel requested the court to exclude evidence of Verduco's reference to "the Mongols," a motorcycle gang.³ Defense counsel argued the absence of gang allegations made the reference far more prejudicial than probative and therefore subject to exclusion under Evidence Code section 352.⁴ The trial court overruled the objection, concluding the reference was a relevant and integral part of the offense of making a criminal threat.

Verduco contends the court's ruling was an abuse of its broad discretion because the court never articulated on the record it was conducting the appropriate balancing test of the prejudicial impact and probative value of the evidence. No express articulation is required. As the Supreme Court has explained, when ruling on an Evidence Code section 352 motion, "a trial court need not expressly weigh prejudice against probative value, or even expressly state it has done so. All that is required is that the record demonstrates the trial court understood and fulfilled its responsibilities under Evidence Code section 352." (*People v. Williams* (1997) 16 Cal.4th 153, 214; accord, *People v. Lucas* (1995) 12 Cal.4th 415, 449.)

The court concluded evidence of Verduco's reference to "the Mongols" was part of the threat charged in the case, implicitly finding it was relevant to showing the reasonableness of Rodriguez's fear for her safety. (See § 422 [criminal threat must be of such gravity as to cause person threatened to have a "reasonabl[e]" and "sustained fear for his or her own safety or for his or her immediate family's safety"].) Although

³ The "Mongols Motorcycle Club" was formed in the 1970's by a small group of Latinos who reportedly had been rejected by the Hells Angels. The gang has a long history of engaging in criminal activity and operates mainly in southern California. (See generally Glover, *Raid Targets Mongols Motorcycle Gang*, L.A. Times (Oct. 22, 2008).)

⁴ Evidence Code section 352 provides, "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Verdusco argued the probative value of the threat was reflected in his statement he would kill her, not in his reference to the Mongols, the trial court concluded Verdusco's Mongol reference, which did not identify Verdusco as a member of that gang, could be admitted without the risk of undue prejudice. That determination is well within the court's broad discretion in such matters. (See, e.g., *People v. Williams*, *supra*, 16 Cal.4th at p. 214; *People v. Karis* (1988) 46 Cal.3d 612, 638 ["The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. '[All] evidence which tends to prove guilt is prejudicial or damaging to the defendant's case. The stronger the evidence, the more it is "prejudicial." The "prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues.'"]].)

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.